

If a sale of service is made in Illinois and no tangible personal property of any kind is transferred incident to that sale of service, no Illinois sales tax or service tax would apply to that sale. See 86 Ill. Adm. Code 140.101 (This is a GIL).

January 23, 2002

Dear Xxxxx:

This is in response to your letter dated November 20, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you have stated and made inquiry as follows:

We are a STATE Corporation doing business in the State of Illinois.
Our IBT ###. Our business primarily provides dance instruction to kids in various locations in the state. I am requesting information on which of the following types of sales are subject to Sales Tax in the state of Illinois.

Dance Fees: these would be monthly fees charged to the student for the dance instruction

Registration fees: Fees to register for classes to cover setup etc. of each student

Competition & show gate sales: Entry fees charged to attend dance shows and recitals.

Prop rentals: Charges to rent various props for routines, such as hats, caps, or poms.

Costumes and clothing

Dance Shoes

Please send the information to
NAME/ADDRESS

I would like to thank you in advance for your attention to this inquiry.

Illinois taxes the retail sale and use of tangible personal property under two separate, but related, statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling at retail tangible personal property for use or consumption. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased anywhere at retail from a retailer. 35 ILCS 105/3. These taxes comprise what is commonly known as "sales tax" in Illinois. Illinois also taxes any tangible personal property that is

transferred incident to a sale of service under the Service Occupation Tax Act (35 ILCS 115/1 et seq.) and the Service Use Tax Act (35 ILCS 110/1 et seq.).

Generally, persons providing dance instruction are primarily engaged in a service occupation. If a sale of service is made in Illinois and no tangible personal property of any kind is transferred incident to that sale of service, no Illinois sales tax or service tax would apply to that sale. Therefore, where dance fees or registration fees are charged to students as a consequence of receiving dance instruction and no transfer of tangible personal property incident to the sale of such dance instruction is made, the receipts from the sale are not subject to tax in Illinois. Sales of tickets to attend dance shows and recitals represent the sale of intangibles, which are not subject to tax.

When you sell costumes and clothing, and dance shoes, you are engaging in the business of selling tangible personal property to purchasers for use or consumption. Such sales are subject to Illinois sales tax, and you are required to collect and remit Retailers' Occupation Tax measured by your gross receipts from the sale of such items. Please refer to the enclosed copy of 86 Ill. Adm. Code 130.101.

With regards to your charges for renting various items for use in performing routines, please be aware that rental receipts received by a lessor under a "true lease" agreement are not subject to Retailers' Occupation Tax because the lessor is deemed the end user of the tangible personal property and incurred Use Tax liability on the cost price of the leased property at the time of purchasing the property at retail. See 86 Ill. Adm. Code 130.2010 and 130.220(a), copies of which are enclosed for your reference. A true lease agreement exists if, at the end of the lease term, there is no option to purchase the property and the property is returned to the lessor. If there is an option to purchase in the lease agreement, it must be for the fair market value of the property in order to be considered a true lease.

Where a lessor in leasing tangible personal property actually transfers the property to the lessee for a nominal purchase option amount, or for no further consideration, the lessor has made a conditional sale of the property and all payments received by the lessor are subject to Retailers' Occupation Tax. See Section 130.2010.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
Enc.